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APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SEBASTIANO NANI, *Plaintiff*,

— against —

HERBERT BROWNELL, JR., Attorney General of the United States, *Defendant*.

Civil Action No. 4515—56

COMPLAINT

The plaintiff, SEBASTIANO NANI, respectfully alleges:

FIRST: That this is an action for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for review under the Administrative Procedure Act. (5 U.S.C. 1001 et seq.).

SECOND: That the defendant, HERBERT BROWNELL, JR., was duly appointed and confirmed as Attorney General of the United States and continues in that capacity.

THIRD: That the defendant, HERBERT BROWNELL, JR., by virtue of his office as Attorney General of the United States has under his control and supervision and subject to his direction all of the agencies and personnel of the United States Department of Justice, including the Immigration and Naturalization Service.

FOURTH: That the plaintiff was born in Italy in 1906 and has been a resident of the United States continuously since 1924.

FIFTH: That the plaintiff is married to a native-born citizen of the United States, and three children have been born in the United States of such marriage.

SIXTH: That on or about August 30th, 1954, the Immigration and Naturalization Service caused to be issued a warrant for the arrest of the plaintiff in deportation proceedings, and that such warrant was served on plaintiff on the date of its issuance.

SEVENTH. That said warrant charged that the plaintiff was subject to deportation for the following reason: "Section 241(a) of the Immigration and Nationality Act, in that, he has been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation, or the possession for the purpose of manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of any of the drugs described therein; Conspiracy (18 USC 371) to violate Jones-Miller Act (21 USC 174) and Harrison Narcotic Act (26 USC 2553)(a))".

EIGHTH: That on November 10th, 1954 a deportation hearing was instituted against the plaintiff by a Special Inquiry Officer of the Immigration and Naturalization Service.

NINTH: That said Special Inquiry Officer at the termination of such hearing ordered that the plaintiff be deported on the charge contained in the warrant of arrest.

TENTH: That an appeal from such order was taken by the plaintiff to the Board of Immigration Appeals.

ELEVENTH: That the Board of Immigration Appeals found that the charge contained in the warrant of arrest had not been sustained, and, accordingly, in a decision made on April 14, 1955 reversed the findings

and conclusions of the Special Inquiry Officer and ordered that the deportation proceedings against the plaintiff be terminated.

TWELFTH: That the Board of Immigration Appeals referred its decision to the Attorney General for review.

THIRTEENTH: That the Attorney General by decision dated September 23, 1955 reversed the decision and order of the Board of Immigration Appeals.

FOURTEENTH: That the warrant of arrest did not adequately or sufficiently advise the plaintiff of the charge against him, and therefore he was deprived of the opportunity to defend himself against it.

FIFTEENTH: That Section 241(a)(11) of the Immigration and Nationality Act at the institution of these deportation proceedings and during their pendency defined three separate and distinct classes of deportable aliens: first, aliens who are or at any time after entry have been narcotic drug addicts; second, aliens who at any time have been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs; and third, aliens who have been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction forming or addiction sustaining opiate.

SIXTEENTH: That the warrant of arrest charged that the plaintiff was within the third category of deportable aliens set forth in 241(a)(11) of the Immigration and Nationality Act.

SEVENTEENTH: That the Attorney General found that the plaintiff was deportable as being within the second category set forth in section 241(a)(11) of the Immigration and Nationality Act.

EIGHTEENTH: That the Attorney General therefore found plaintiff deportable on a ground different from that charged in the warant of arrest, and that the plaintiff was therefore deprived of his constitutional and statutory right to due process of law.

NINETEENTH: That when the deportation proceedings against plaintiff were instituted and during their pendency, conviction of the crime of conspiracy (18 U.S.C. 371) was not included in Section 241(a)(11) as a ground for deportation.

TWENTIETH: That the Board of Immigration Appeals was therefore correct in its decision that the plaintiff was not deportable by reason of his conviction of the crime of conspiracy, and that the Attorney General was in error when he reversed the decision and order of the Board of Immigration Appeals.

TWENTY-FIRST: That the Board of Immigration Appeals contrary to pertinent regulations did not transmit to plaintiff or his counsel a copy of its decision of April 14th, 1955 until after such decision had been reversed by the Attorney General.

TWENTY-SECOND: That the Board of Immigration Appeals contrary to pertinent regulations did not furnish notice to plaintiff or his counsel that it had referred its decision of April 14th, 1955 to the Attorney General for review.

TWENTY-THIRD: That the failure by the Board of Immigration Appeals to make timely service upon the plaintiff or his counsel of a copy of its decision and to furnish plaintiff or his counsel with notice that such de-

cision had been referred to the Attorney General for review deprived the plaintiff of the opportunity to submit briefs, memoranda, or other material to the Attorney General to be considered in connection with his review of the decision of the Board of Immigration Appeals.

TWENTY-FOURTH: That the warrant of arrest and the deportation proceedings violated the constitutional and statutory rights of the plaintiff to due process of law.

WHEREFORE, plaintiff prays for judgment:

1. Declaring that the warrant of arrest and all proceedings pursuant thereto are invalid, null, void, and of no effect.

2. Restraining the defendant and all persons under his supervision and control from taking plaintiff into custody and deporting him.

3. That pending the final determination of this cause a preliminary injunction be issued restraining and enjoining the defendant and all persons under his supervision and control from taking plaintiff into custody and deporting him.

4. That pending the issuance of such preliminary injunction a temporary order be issued forthwith, restraining and enjoining the defendant and all persons under his supervision and control from taking plaintiff into custody and deporting him.

5. Granting such other and further relief as may be just and appropriate.

/s/ WILLIAM H. COLLINS
/s/ SAMUEL PAIGE
Attorneys for Plaintiff

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ORDER

This cause having come on for hearing on defendant's motion for summary judgment, and the Court having considered the pleadings and exhibits filed herein, and a full and complete hearing having been accorded the parties thereto, and the Court having found that there is no genuine issue of material fact and the defendants as a matter of law are entitled to judgment herein, it is this 3rd day of April, 1957

ORDERED that the defendant's motion for summary judgment be and the same hereby is granted and the complaint herein is dismissed, and it is

FURTHER ORDERED that the preliminary injunction issued herein be and the same hereby is terminated.

/s/ MATTHEW F. McGUIRE
MATTHEW F. McGUIRE, Judge

Submitted by:

/s/ E. RILEY CASEY
E. RILEY CASEY
Assistant United States Attorney
Attorney for Defendant

Seen: No objection as to Form:

/s/. WILLIAM H. COLLINS
WILLIAM H. COLLINS
Attorney for Plaintiff

MEMORANDUM

The plaintiff filed a complaint seeking a declaratory judgment declaring that a warrant of arrest directed towards his deportation and all proceedings pursuant thereto to be declared invalid and void. A temporary restraining order and a preliminary injunction enjoining the defendant from acting upon the same until further order of the Court was subsequently entered.

The ground of deportation is predicated upon the fact that on August 27, 1954 the plaintiff was sentenced to three years imprisonment upon his conviction in the United States District Court for the Northern District of California for violation of 18 U.S.C. 371, the so-called Conspiracy Statute, the laws which he was held to be in conspiracy to violate being those relating to narcotic drugs, all within, the Government claims, the purview of Title 8, 1251 U.S.C.A.

The reasons adduced and which he relies upon in his effort to invalidate the warrant of deportation are two: (1) that the crime of conspiracy is *not* a ground for deportation under the statute and, (2) that he was not notified of referenee of his case to the Attorney General after the action of the Board of Immigration Appeals had made such and that this violated due process. These contentions will be disposed of seriatim, and both are without merit.

First, there is no question but that conspiracy is a separate offense. It was a misdemeanor at common law and by statute it has been integrated into the body of federal criminal law. There are numerous cases, so numerous as to remove the question completely even from the area of argument, holding that the crime of conspiracy, so-called, is separate and distinct from the substantive offense. However, conspiracy cannot exist in a vacuum. It is an unlawful design or agreement to do something. It takes